

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION FOUNDATION,
INC.; ANNE NICOL GAYLOR; ANNIE LAURIE
GAYLOR; PAUL GAYLOR; DAN BARKER;
PHYLLIS ROSE, and
JILL DEAN,

Plaintiffs,

v.

Case No. 08-CV-588

PRESIDENT BARACK OBAMA; WHITE
HOUSE PRESS SECRETARY ROBERT L.
GIBBS; WISCONSIN GOVERNOR JIM DOYLE;
and SHIRLEY DOBSON, CHAIRMAN OF THE
NATIONAL DAY OF PRAYER TASK FORCE,

Defendants.

AFFIDAVIT OF THOMAS C. BELLAVIA

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Thomas C. Bellavia, being first duly sworn, on oath deposes and says:

1. I am an adult resident of the state of Wisconsin who presently lives in Dane County.
2. I am employed by the Wisconsin Department of Justice as an Assistant Attorney General.
3. In my capacity as an Assistant Attorney General, I represent defendant Wisconsin Governor Jim Doyle (“Governor Doyle”) in the above-captioned matter.

4. This affidavit is made in respect to Exhibits 1 through 13, which are attached.

5. Exhibit 1 is a true and correct copy of Wisconsin Governor Jim Doyle's First Set of Interrogatories and First Request for Production of Documents, which I personally served at the office of Plaintiffs' counsel on July 6, 2009.

6. Exhibit 2 is a true and correct copy of an unsigned version of Plaintiffs' Responses to Defendant Wisconsin Governor Jim Doyle's First Set of Interrogatories, which was served by Plaintiffs via email on August 28, 2009.

7. Exhibit 3 is a true and correct copy of Federal Defendants' First Set of Interrogatories Upon Plaintiffs, which was served by the Federal Defendants' on July 6, 2009.

8. Exhibit 4 is a true and correct copy of an unsigned version of Plaintiffs' Responses to Defendants President Barack Obama and Robert L. Gibbs' First Set of Interrogatories, which was served by Plaintiffs via email on August 24, 2009.

9. Exhibit 5 is a true and correct copy of Federal Defendants' Objections and Responses to Plaintiffs' Request for Production of Documents, which was served by the Federal Defendants on August 24, 2009.

10. Exhibit 6 is a true and correct copy of the National Day of Prayer proclamation issued by President Barack Obama on May 7, 2009, which was served by the Federal Defendants' pursuant to Federal Defendants' Objections and Responses to Plaintiffs' Request for Production of Documents.

11. Exhibit 7 is a true and correct copy of Defendant Shirley Dobson's Response to Plaintiffs' Request for Production of Documents, which was served by defendant Dobson on August 26, 2009.

12. Exhibit 8 is a true and correct copy of a letter from defendant Shirley Dobson to President George W. Bush, dated March 1, 2007, which was served by defendant Dobson, pursuant to Defendant Shirley Dobson's Response to Plaintiffs' Request for Production of Documents.

13. Exhibit 9 is a true and correct copy of a letter from defendant Shirley Dobson to President George W. Bush, dated March 27, 2008, which was served by defendant Dobson pursuant to Defendant Shirley Dobson's Response to Plaintiffs' Request for Production of Documents.

14. Exhibit 10 is a true and correct copy of an email that I personally sent to the office of Plaintiffs' counsel on October 3, 2008, requesting signed copies of the unsigned interrogatory answers that Plaintiffs had previously served via email in August 2009.

15. Exhibit 11 is a true and correct copy of a signed version of Plaintiffs' Responses to Defendant Wisconsin Governor Jim Doyle's First Set of Interrogatories, which was served by Plaintiffs via email on October 5, 2009.

16. Exhibit 12 is a true and correct copy of a signed version of Plaintiffs' Responses to Defendants President Barack Obama and Robert L. Gibbs' First Set of Interrogatories, which was served by Plaintiffs via email on October 5, 2009.

17. The October 5, 2009, version of Plaintiffs' Responses to Defendant Wisconsin Governor Jim Doyle's First Set of Interrogatories (Exhibit 11) is not simply a signed copy of the August 28, 2009, version (Exhibit 2), but rather contains substantive changes to the answers themselves.

18. More specifically, changes have been made in Exhibit 11 to the answers to interrogatories 1 and 3 through 6.

19. Previously, in Exhibit 2, the answers to interrogatories 1 and 3 through 5 specifically identified only the 2008 Wisconsin day-of-prayer proclamation. In Exhibit 11, however, each of those answers was changed to specifically identify the 2005-2009 Wisconsin proclamations.

20. In addition, in Exhibit 11, the following new sentence was appended to the prior answer to Governor Doyle's interrogatory 4: "In 2009, Doyle publicly stated he was issuing the NDP Proclamation in response to the Wisconsin affiliate of the NDP." This new sentence fails to identify the date or any contextual facts regarding the alleged statement by Governor Doyle. *See* Exhibit 1 at 2 and 5 (describing the requested specificity in interrogatory answers).

21. Furthermore, also in Exhibit 11, the following new sentence was appended to the prior answer to Governor Doyle's interrogatory 6: "The office of the Governor has publicly stated it issues the proclamation in response to NDP Task Force-related demands." This new sentence fails to identify the date or any contextual facts regarding the alleged statement by the Office of the Governor. *See* Exhibit 1 at 2 and 6 (describing the requested specificity in interrogatory answers).

22. The October 5, 2009, version of Plaintiffs' Responses to Defendants President Barack Obama and Robert L. Gibbs' First Set of Interrogatories (Exhibit 12) also is not simply a signed copy of the August 24, 2009, version (Exhibit 4), but rather contains substantive changes to the answers themselves.

23. At the time of my October 3, 2009, email to Plaintiffs' counsel (Exhibit 10; *see* ¶ 14 above), I had already drafted the Brief in Support of Motion for Summary Judgment by Defendant Wisconsin Governor Jim Doyle and the Proposed Findings of Fact in Support of Wisconsin Governor Jim Doyle's Motion for Summary Judgment. Those documents were drafted

in reasonable reliance on the August 28, 2009, version of Plaintiffs' Responses to Defendant Wisconsin Governor Jim Doyle's First Set of Interrogatories (Exhibit 2) and the August 24, 2009, version of Plaintiffs' Responses to Defendants President Barack Obama and Robert L. Gibbs' First Set of Interrogatories (Exhibit 4).

24. When the signed and altered versions of Plaintiffs' interrogatory answers (Exhibits 11 and 12) were served via email on October 5, 2009, Plaintiffs did not provide any communication notifying me or counsel for the other defendants that Exhibits 11 and 12 differed substantively from Exhibit 2 and 4 that had been served, respectively, on August 28, 2009, and August 24, 2009.

25. As a result of Plaintiffs' failure to notify the Defendants of the substantive alterations to their interrogatory answers, those alterations were not discovered until final cite checking was being conducted at the end of the business day on October 8, 2009—the day before all summary judgment filings are due.

26. Under the circumstances described in ¶¶ 14 to 25 above, it would be impossible for Governor Doyle to rewrite his summary judgment filings to account for the differences between the original Exhibits 2 and 4, on the one hand, and the altered Exhibits 11 and 12, on the other. In addition, it is Governor Doyle's contention that any attempt by Plaintiffs—on October 5, 2009, or later—to amend their August 2009 interrogatory answers by adding information that had been requested and was readily available to Plaintiffs at the time of the August 2009 answers, but was not provided at that time, would not be a "seasonabl[e]" amendment, within the meaning of Fed. R. Civ. P. 26(e)(2). For these reasons, Governor Doyle's summary judgment brief and proposed findings of fact refer to and argue in terms of Exhibits 2 and 4, rather than the differing Exhibits 11 and 12.

27. Exhibit 13 is a true and correct copy of an email that I sent to Plaintiffs' counsel shortly after I discovered that Exhibits 11 and 12 differed substantively from Exhibits 2 and 4. Among other things, the email asks whether the alterations to the interrogatory responses were served by mistake. However, Plaintiffs' counsel is currently traveling out-of-state and, at the time of this writing, it has not yet been possible to resolve this issue. If it turns out that the service of the altered interrogatory responses was not a mistake, then Governor Doyle, at the proper time, may move to strike Exhibits 11 and 12 and request any other appropriate relief.

Dated this 9th day of October, 2009.

s/Thomas C. Bellavia
THOMAS C. BELLAVIA

Subscribed and sworn to before me
this ____ day of _____, 2009.

Notary Public, State of Wisconsin
My commission: _____

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